

U
N

APR 26 2002

Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Mark NEWBY,

Plaintiff,

v.

ENRON CORP., *et al.*,

Defendants.

§
§
§
§
§
§
§

C.A. No. H-01-3624

AND CONSOLIDATED CASES

DECLARATION OF ANDREW RAMZEL
IN SUPPORT OF
ARTHUR ANDERSEN'S REPLY TO THE *BULLOCK* PLAINTIFFS'
RESPONSE TO ANDERSEN'S MOTION TO STAY DISCOVERY
AND TO ENJOIN FLEMING FROM SEEKING A TEMPORARY
RESTRAINING ORDER IN *BULLOCK*
AND
ARTHUR ANDERSEN'S RESPONSE TO *BULLOCK*'S MOTION TO
QUASH ANDERSEN'S MOTION AND ALTERNATIVE MOTION
TO DELAY CONSIDERATION AND OF ANDERSEN'S MOTIONS¹
AND
ARTHUR ANDERSEN'S SUPPLEMENTAL MOTION TO ENJOIN
FLEMING FROM SEEKING UNSPECIFIED RELIEF IN RESPONSE
TO DEFENDANTS' PROPERLY FILED MOTIONS IN THIS COURT

1. I, Andrew Ramzel, am an attorney representing Arthur Andersen L.L.P. in the above-captioned action. I am an attorney licensed to practice law in the State of Texas and before this Court. I am competent to make this declaration, and it is based on my personal knowledge. I make this declaration in opposition to "The Bullock Plaintiffs' Motion to Quash Andersen's Emergency Motion to Stay and to Enjoin F&A From Seeking A Temporary Injunction in Bullock and Alternative Motion to Delay Consideration of Andersen's Motions." ("the Bullock Plaintiffs' Motion to Quash")

¹ On April 24, 2002, this Court issued an order stating that the Court would rule on Andersen's motion on April 29, thus mooted Fleming's Alternative Motion to Delay.

2. Submitted along with my declaration are true and correct copies of the documents listed below:

<u>Exhibit</u>	<u>Description</u>
A.	March 28, 2002 Transcript of Status Conference (“Pretrial Hearing”) before the 21 st Judicial District Court, Hon. Terry Flenniken presiding.
B.	March 29, 2002 Letter from G. Sean Jez to Defense Counsel in <u>Bullock v. Arthur Andersen, LLP</u>
C.	April 11, 2002 Notice of Hearing on Plaintiffs’ Application for Temporary Injunction
D.	April 16, 2002 Amended Notice of Hearing on Plaintiffs’ Application for Temporary Injunction and accompanying correspondence from G. Sean Jez
E.	April 23, 2002 Notice of Defendants Actions Taken In Derogation of This Court’s Jurisdiction

3. In the Bullock Plaintiffs’ Motion to Quash, they assert, “Since late March 2002, Andersen has been aware of the fact that May 3 is the scheduled date for the temporary injunction hearing.” See id., ¶ 1. This statement is false.

4. Andersen removed the Bullock lawsuit to in the United States District Court for the Western District of Texas, Austin Division, on January 30, 2002. See Ex. A at 1.

5. The Bullock lawsuit was remanded to the 21st Judicial District Court on March 5, 2002.

6. On March 15, 2002, the state district court sent notice to the parties of a status conference to be held on March 28, 2002. See Ex. A.

7. On March 28, 2002, a status conference was held before the 21st Judicial District Court, Judge Terry Flenniken presiding. See Ex. B.

8. At no time before March 28, 2002, did the Bullock plaintiffs' counsel discuss a hearing on any temporary injunction in the Bullock matter with me, let alone make "Andersen ... aware of the fact that May 3 is the scheduled date for the temporary injunction hearing."

9. At the very end of the status conference on March 28, 2002, Mr. Jez mentioned the possibility of a temporary injunction hearing for the first time since the Bullock action was removed. After the state district court had already announced the dates in the scheduling order, Mr. Jez mentioned:

Your Honor, just some other issues I wanted to bring up to the court.

...

Second, originally when we had filed this lawsuit we sought a TRO which judge – I can't remember the name of the judge that signed it. We'd like to set that for a TI hearing. Obviously the TI that we – the temporary injunction that we've requested goes to Mr. Lay, Mr., Fastow and Mr. Skilling. I know that Mr. Lay and Mr. Fastow are not parties – or have not answered or been served in this lawsuit yet, so at some point in the future we'd like to set that for a hearing after they've either been served or answered.

THE COURT: Are you asking for a hearing at this time or –

MR JEZ: Yes, Your Honor, but, you know, I do take into consideration the fact that those parties have not been served and I don't know if the court wants to wait until after they've been served. I know that they have counsel and we can notify them.

THE COURT: Call Ms. Ikard. She'll give you a court date.

Ex. A, p. 37, *l.* 2 – p. 38, *l.* 2.

10. On March 28, 2002, Andersen was never mentioned in Mr. Jez's discussion with Judge Flenniken about the possibility of temporary injunction hearing. See id.

11. Fleming's allegation that "Andersen did not object to the discovery schedule [during the March 28 status conference] or to the fact that a hearing on the injunction would be

scheduled” completely mischaracterizes Andersen’s statements at the conference. During the status conference, Andersen specifically informed the state court judge that this Court – “Judge Harmon” – has the statutory authority under SLUSA to stay discovery in the Bullock case if the discovery was disruptive to the federal proceedings. Id., p. 22, *ll.* 9 – 20. Andersen went so far as to suggest that the state court scheduling order “mirror[] the federal court scheduling order.” Id. Moreover, because Andersen was not mentioned as a possible target of the injunction hearing, no objection was appropriate.

12. On March 29, 2002, Mr. Jez sent a letter to counsel for the Bullock defendants. In this letter, Mr. Jez again never mentioned scheduling a temporary injunction hearing involving Andersen. See Ex. B.

13. At no time in March 2002 was “Andersen [made] aware of the fact that May 3 is the scheduled date for the temporary injunction hearing.”

14. On April 11, 2002, Mr. Jez sent a notice that the Bullock plaintiffs’ application for a temporary injunction would be heard on May 16, 2002, not May 3, 2002. See Ex. C.

15. Finally, on April 16, 2002, Mr. Jez gave notice for the first time that the hearing on his clients’ application for a temporary injunction would be heard on May 3, 2002. See Ex. D. Contrary to plaintiffs’ allegation that “[s]ince late March 2002, Andersen has been aware of the fact that May 3 is the scheduled date for the temporary injunction hearing,” Andersen did not (and could not have) become aware of the May 3rd hearing date until April 16.

16. Andersen’s conduct played no role in creating the emergency situation. On the very day Andersen first learned of the May 3rd hearing – April 16 – only seventeen days remained before the hearing commenced. Thus, Andersen could not submit a motion to this Court concerning the hearing according to the Court’s routine twenty day submission calendar

without its motion becoming moot before the Court considered it. See S.D. Tex. Local R. 7.3.

Therefore, Andersen was forced to request emergency relief so that its motion could be heard.

17. Andersen did not delay in seeking emergency relief. It filed its emergency motion the day after it learned of the May 3rd hearing.

18. I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 26, 2002.



Andrew Ramzel

CERTIFICATE OF SERVICE

I hereby certify that on this 26 day of April, 2002, the foregoing declaration was served pursuant to the Court's April 5, 2002 Order.



Andrew Ramzel

The Exhibits May
Be Viewed In The
Office of the Clerk